IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 534 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VIKRAMBHAI BHALCHANDRA SHAH - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

==========

Appearance :
MR PUSHPADATTA VYAS for the Applicant.
Mr. K.C.Shah, Addl. PUBLIC PROSECUTOR for the Respondent.

==========

CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 25/08/2006

ORAL JUDGMENT

The present Revision Application has been preferred against the order dated 2nd July, 2006 below application exh. 1 in Inquiry case no. 30 of 2006

passed by the learned Judicial Magistrate, First Class, Jambusar.

2. I have heard the learned counsel for the applicant who has mainly submitted that the present applicant was the original complainant who filed his complaint before the learned Judicial Magistrate, First Class, Jambusar being Inquiry case no. 30 of 2006, wherein several allegations have been levelled against the accused under sections 381, 409, 406, 467, 468, 471 read with section 120-B of the Indian Penal Code as well as sections 3 and 7 of The Prevention of Damage to Public Property Act,1984. It is submitted by the learned advocate for the applicant that the applicant is vitally interested in the water pipeline of Jambusar Nagarpalika. The allegations levelled in the complaint are clear accusations against the accused who are referred in the complaint. The learned trial Judge has wrongly arrived at a conclusion that the present applicant has no locus standi to file such a complaint. On the contrary, the present applicant is vitally interested and affected and is directly concerned with the

consequence of the offence and therefore, the conclusion arrived at by the trial court that the applicant cannot file such a complaint is nothing but misconception of law. Hence, the impugned order passed by the trial court is liable to be quashed and set aside and the Inquiry case ought to have been taken on record and necessary order ought to have been passed by the trial court for investigation/inquiry into the case.

3. I have heard the learned Additional Public Prosecutor for the State who is unable to speaking anything in support of the impugned order. So far as the question of locus standi of the present applicant is concerned, he submitted that the allegations are pertaining to water pipe line of Jambusar Nagarpalika, wherein the present applicant is directly affected by the commissioning of the offence as alleged by the present applicant and therefore, it cannot be said that the present applicant has no locus standi to file such a complaint. On the contrary, citizens are best persons who are residing in the nearby vicinity of the Jambusar Nagarpalika

who once the offence, and bringing to the notice of the court. On the contrary, it was the duty of the court to either start with the inquiry or investigation of the complaint filed by the complainant, as per the Code of Criminal Procedure and therefore, the impugned order may be quashed and set aside and a direction may be given to the trial court to pass necessary orders except under sections 203 of the Code of Criminal Procedure for inquiry/investigation of the allegations levelled in the complaint.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, the order dated 27th July, 2006 below application exh. 1 in Inquiry case no. 30 of 2006 passed by the learned Judicial Magistrate, First Class, Jambusar requires to be quashed and set aside mainly for the reason that it cannot be said that the present applicant is having no locus standi to file the complaint. On the contrary, the present applicant-complainant who is residing within Jambusar Nagarpalika is vitally affected by the offence

committed by the accused as per the allegations levelled in the complaint. Such allegations are so clear that they require inquiry/investigation of the complaint and the complaint ought not to have been dismissed under section 203 of the Code of Criminal Procedure. The trial court ought to have appreciated the fact that criminal law can be put into motion by anyone except where Criminal Procedure Code has specifically stated about the complaint. It is also rightly pointed out by the learned Additional Public Prosecutor that very limited locus standi has been discussed in the Code of Criminal Procedure, like the one as per section 198 thereof. Save and except these exceptions, locus standi cannot be a major question so far as filing of the complaint is concerned. Anybody can put criminal into motion. On the contrary, looking to the facts of the present case, the present complainant is nothing but victim of the offence if at all it has been committed by the accused and is directly affected by the offence. Therefore, the conclusion arrived at by the trial court, while dismissing the complaint under section 203 of the Code of Criminal Procedure is absolutely

de hors the facts and law.

5. In view of these facts, the impugned order dated 27th July, 2006 below application exh. 1 in Inquiry case no. 30 of 2006 passed by the learned Judicial Magistrate, First Class, Jambusar is hereby quashed and set aside. The trial court is directed to start inquiry/investigation of the criminal complaint filed by the complainant. Rule made absolute.

(D.N.Patel,J)

***darji